

APR 10 2008

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

VU NGUYEN,

Defendant - Appellant.

No. 05-10399

D.C. No. CR-03-00158-KJD

District of Nevada,

Las Vegas

ORDER

Before: B. FLETCHER and BERZON, Circuit Judges, and TRAGER,^{*} District Judge.

The memorandum disposition filed February 22, 2008, is amended as follows:

At page 3, lines 4-8, replace the entire sentence beginning “Finally, Nguyen’s defense” with “Finally, Nguyen’s defense that someone else committed the crime rested on the testimony of eyewitnesses that the two robbers were different heights, evidence Duong and Nguyen are the same height, and testimony that some of Duong’s other associates are shorter than Duong. But Nguyen only offered additional evidence implicating one associate of Duong’s,

^{*} The Honorable David G. Trager, Senior United States District Judge for the Eastern District of New York, sitting by designation.

and the government presented strong evidence that this associate was in Los Angeles at the time of the robbery.”

At page 5, lines 3-6, replace “Even assuming there was vouching, Nguyen fails to demonstrate that the vouching, ‘when taken in the context of the entire trial, materially affected the jury’s ability to judge the evidence impartially.’ *See United States v. Rudberg*, 122 F.3d 1199, 1205 (9th Cir. 1997).” with “Even assuming there was vouching, any error was harmless.”

With these amendments, a majority of the panel has voted to deny the petition for rehearing. Judge Berzon has voted to deny the petition for rehearing en banc, and Judges Fletcher and Trager so recommend.

The full court has been advised of the petition for rehearing en banc and no judge of the court has requested a vote on whether to rehear the matter en banc.

Fed. R. App. P. 35.

The petition for rehearing and the petition for rehearing en banc, filed March 7, 2008, are DENIED.